IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

MFA.No. 173 of 2001

IC.8/1997 of E.I. COURT, KOLLAM
.....

APPELLANT/FIRST OPPOSITE PARTY:

THE REGIONAL DIRECTOR, E.S.I.
CORPORATION, TRICHUR.

BY ADV. SRI.TPM.IBRAHIM KHAN

RESPONDENTS/APPLICANT & 2ND OPPOSITE PARTY:

1. R.RAMACHANDRAN PILLAI, VELICHALUVILA VEEDU, T.K.M.COLLEGE P.O., KARICODE, KOLLAM.

2. THE MANAGER, VIJAYALEKSHMI CASHEW CO., CHANDANATHOPE BRANCH, KOLLAM.

R1 BY ADV. SRI.P.VIJAYA BHANU

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.1902/01 IN MFA 173/2001

DISMISSED

29.6.2007

SD/-J.B.KOSHY, JUDGE
SD/-K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 173 of 2001

JUDGMENT

Koshy, J.

The first respondent is an insured employee under the E.S.I.Scheme, working in Vijayalakshmi Cashew Company, Chandanathope, a covered institution under the E.S.I. Act. He met with an accident in the course of his employment on 14.2.1995 by hitting his right leg against an iron rod, causing injury to his right leg. The E.S.I. Corporation did not treat this as an employment injury, because, earlier he had sustained an injury and according to the Corporation, the present injury must have aggravated because of the earlier injury. Secondly, it was contended that even though he was insured at the time of the accident, the benefit period was not started as per Regulation 4 of the E.SI. (Gl.) Regulations 1950.

2. All insured persons are entitled to disablement benefits for the injuries arising out

of employment and during the course of employment. The benefit period is applicable only to the sickness benefits and not for accident benefits. The employee was insured at the time of the accident. He was paying the contribution and the employer was also contributing its share and therefore, he is entitled to get the disablement benefit. On the basis of the evidence adduced and considering the totality of circumstances available the E.I. Court held that the injury was only due to the accident occurred during the course of employment and the Corporation was directed to give benefits to the injured with 12% interest, but, percentage of disability was directed to be assessed by a medical board. The finding that the injury suffered by the first respondent is a finding of fact. The E.S.I. Act is a welfare legislation. The Corporation cannot always take a negative stand. The incident occurred on 14.2.1995. Even now the Corporation is obstructing for an

examination by the medical board. It is very much eager to collect contributions. But, at the time when the benefits are to be given, all sorts of technical objections are being raised. The poor injured employee, who was involved in the accident, is denied the benefits because of the stay obtained and the the medical examination is also not over. Thereafter, the Corporation has to fix the compensation. Erosion of money value has to be taken into account. But, considering the present rate of interest, we reduce the rate of interest from 12% to 9%.

With the above modifications, the appeal is dismissed with costs.

(J.B.Koshy, Judge)

29th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.173 of 2001

JUDGMENT

29th June, 2007